



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable W. Payne Satterfield, Commissioner  
Firemen's Pension Commission  
Austin, Texas

Dear Sir:

Opinion No. O-4937

Re: Eligibility for retirement and  
to participate in Firemen's  
Relief and Retirement Fund.

Your request for opinion addressed to the Attorney  
General of Texas reads as follows:

"In the operation of the Firemen's Relief  
and Retirement system under the provisions of Art-  
icle 6243e, the following question has arisen.

"Mr. A. has served actively in a fire de-  
partment of this State for more than 20  
years but had retired from active service  
prior to the time his department became a  
participating member of the retirement  
system. After he retired, his department  
became a participating member of the sys-  
tem. Then after his department became a  
participating department, Mr. A. was voted  
into the department as a regularly enrolled  
and appointed member of the department. Mr.  
A. is now over 55 years of age. Is he now  
eligible for retirement or will he have to  
wait one year before being granted benefits  
as is specified in the last sentence of Sec-  
tion 21 of the Act?"

Section 6 of Article 6243e, Vernon's Annotated  
Civil Statutes reads as follows:

"Sec. 6. On and after the 1st day of April,  
A. D. 1939, any person who has been duly appointed  
and enrolled, and who has attained the age of  
fifty-five (55) years and who has served actively

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for a period of twenty (20) years in some regularly organized fire department in any city or town in this State now within or that may come within the provisions of this Act, in any rank, whether as wholly paid, part paid or volunteer firemen shall be entitled to be retired from such service or department and shall be entitled to be paid from the Firemen's Relief and Retirement Fund of that city or town, a monthly pension equal to one-half of his average monthly salary not to exceed a maximum of One Hundred Dollars (\$100) per month. Such average monthly salary to be based on the monthly average of his salary for the five (5) year period preceding the date of such retirement; provided further, that if his average monthly salary is Fifty Dollars (\$50) or less per month or if a volunteer fireman with no salary, he shall be entitled to a monthly pension or retirement allowance of Twenty-five Dollars (\$25)."

Section 21, Article 6243e, V. A. C. S., provides:

"Sec. 21. In computing the time or period for retirement for length of service as herein provided, less than one year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years through no fault of his own and subsequent returns to the department, this period of time shall not be counted against him in so far as his retirement time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall not be entitled to benefits hereunder until he shall have served one year continuously."

The conditions thus imposed, regarding eligibility for retirement benefits, require that a person be "duly appointed and enrolled"; he must have attained the age of 55 years; he must have served actively for a period of 20 years.

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You state that Mr. A. "retired from active service prior to the time his department became a participating member of the Retirement System", and that "after his department became a participating department, Mr. A. was voted into the department as a regularly enrolled and appointed member of the department". You do not state what period of time he was out of the service of the particular department. This is material in determining his eligibility for retirement purposes. Under authority of Section 21, supra, if he were out of the service less than five years, he should receive credit for retirement purposes for such period of time as he may have previously served. If, however, he were out of the service for more than five years "no previous service shall be counted", unless he was out of the service through no fault of his own, in which event such "period of time shall not be counted against him insofar as his retirement time is concerned".

When "Mr. A." returned to the service of the department he thereby again joined same. Under the provisions of Section 21, supra, he must serve "one year continuously" after his return to the department before he shall be entitled to receive a pension.

If, therefore, "Mr. A." returned to the service of the department within five years from the time he resigned he will be entitled to receive a pension when he has served one year after his return, all other requirements existing.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *E. G. Pharr*

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Assistant

EGP:mp

*Gerald C. Mann* 1922

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